

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

SAEED MOHAMMADI and  
FATEMEH ASSANGARI,

Plaintiffs,

v.

EMC MORTGAGE CORPORATION,  
US BANK, Trustee,  
Bear Stearns Asset Backed Certificate  
Series I, LLC 2006-AC2, and  
EQUITY TRUSTEES, LLC,

Defendants.

Case No. 1:12-cv-00221-CMH-JFA

**MOTION TO DISMISS THE COMPLAINT OF  
PLAINTIFFS SAEED MOHAMMADI AND FATEMEH ASSANGARI**

Defendant US Bank, Trustee, Bear Stearns Asset Backed Certificate Series I, LLC 2006-AC2 (“US Bank”), by its undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, hereby moves to dismiss the Complaint of Plaintiffs Saeed Mohammadi and Fatemeh Assangari (“Plaintiffs”). Defendant EMC Mortgage Corporation (“EMC”) has not been served in this matter.

As more fully explained in the accompanying Memorandum in Support of this Motion, Plaintiffs’ claims all fail as a matter of law, and any amendment would be futile.

Plaintiffs’ claim for “wrongful foreclosure” cannot succeed because as numerous courts have held, there is no private right of action under the Home Affordable Modification Program (“HAMP”), and Plaintiffs cannot convert the denial of a permanent loan modification into a claim for breach of contract under the plain terms of the loan modification documentation or

HAMP itself. Similarly, Plaintiffs' allegations that US Bank and/or EMC were not the proper parties to authorize foreclosure rely on nothing more than their baseless interpretation of and extrapolation from correspondence they received, and such arguments are contrary to well-established Virginia law. Not to be forgotten, it is unclear that Virginia recognizes a cause of action for wrongful foreclosure. Therefore, Plaintiffs' "wrongful foreclosure" claim must be dismissed.

Plaintiffs' remaining allegations fail to state any claim for which relief may be granted. In Count II, Plaintiffs have failed to allege with anything more than conclusory statements that Defendants have created a cloud on their title. Finally, there also is no basis for a declaration of Plaintiffs' right to the property as sought in Count III because their claim pertains to a past event and does not plausibly provide any basis for the Court to find that Plaintiffs are entitled to possession of the property at issue in this matter. Therefore, Plaintiffs' claim for a declaratory judgment must fail as a matter of law as well.

Because Plaintiffs' Complaint essentially replaces their complaint filed several months ago against Defendants EMC and US Bank, any further amendment of the legally defective claims would be futile and the Complaint should be dismissed with prejudice.

WHEREFORE, Defendant US Bank respectfully requests that the Court grant the Motion to Dismiss with prejudice.

Date: March 7, 2012

Respectfully submitted,

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*Counsel for Defendants EMC Mortgage Corporation and  
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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of March, 2012, I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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